



**UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)  
HU/12522/2018**

**APPEAL NUMBER:**

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**Decision and Reasons  
Promulgated**

**On: 12 August 2019**

**On: 02 September 2019**

**Before**

**Deputy Upper Tribunal Judge Mailer**

**Between**

**MR LUFTAR IDRIZI  
ANONYMITY DIRECTION NOT MADE**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation**

**For the Appellant: Mr F Farhat, Gulbenkian Andonian Solicitors**

**For the Respondent: Ms S Jones, Senior Home Office Presenting  
Officer**

**DECISION AND REASONS**

1. The appellant is a national of Albania, born on 14 March 1973. He appeals with permission against the decision of the First-tier Tribunal Judge promulgated on 20 March 2019 dismissing his appeal against the decision of the respondent dated 30 May 2018 to refuse his human rights application made on 3 November 2017 for leave to remain in the UK.

2. The appellant entered the UK clandestinely on 29 December 1998 and claimed asylum in his own name as a national of Kosovo. He used his correct name and date of birth. His asylum claim was refused in August 2000. His appeal against that decision was dismissed on 26 January 2004.
3. On 10 February 2005, his appeal was allowed on human rights grounds only. He was granted indefinite leave to remain on 8 October 2008. Throughout his dealings with the Home Office he continued to state that he was a Kosovan national.
4. On 30 June 2015, he applied for naturalisation, stating that he was a Kosovan national. In January 2016, the Albanian authorities confirmed that the appellant was an Albanian national. His application for naturalisation was refused on the grounds of deception on 19 April 2016.
5. On 5 June 2017 he was detained by the enforcement authorities. He was served with a notice as a person who has obtained leave to remain by deception, thereby revoking his indefinite leave to remain with immediate effect pursuant to s.76(2) of the Nationality, Immigration and Asylum Act 2002.
6. On 2 November 2017 he made an application for leave to remain under paragraph 276ADE on the grounds of private life. His application was refused on 30 May 2018 under paragraph R-LTRP.1.1(d)(i) on the grounds of suitability under section S-LTR, as he had previously made false representations by claiming to be a national of Kosovo who obtained leave to remain in the UK. Due consideration was given to whether he should nevertheless be granted leave, but the respondent contended that the exercise of discretion was not appropriate on this occasion.
7. His application was also dismissed under paragraph 276ADE (1) on the grounds of suitability relating to the false representation he had previously made to obtain leave to remain in the UK, by claiming to be a national of Kosovo.
8. He had lived in the UK for 18 years and ten months and it was not accepted that he had lived here for 20 years. Nor did he meet the requirements of paragraph 276DE(1)(vi) as it was not accepted that there would be very significant obstacles to his integration into Albania if required to leave. Nor were there exceptional circumstances.
9. It was contended on his behalf before the First-tier Tribunal that his indefinite leave to remain should not have been revoked pursuant to s.76(2) of the 2002 Act as it was not obtained by deception. He was granted leave outside the Immigration Rules.
10. The First-tier Tribunal Judge rejected that submission. She found that his leave outside the Rules was still on the basis that he was a Kosovan national [68-69]. She also rejected his contention that there would be very significant obstacles to his integration into Albania in the light of the time he has spent in the UK.

11. She accepted that he is in a new relationship. The couple met in 2017 but started their relationship in 2018. They only started living together in February 2019, about a month before the hearing. The appellant did not satisfy the Rules as they have not lived together for a period of two years.
12. She was not satisfied that the appellant could meet the Rules under paragraph 276ADE [86]. Nor were there exceptional circumstances rendering the refusal of his application a breach of Article 8 because it would lead to unjustifiably harsh consequences for him [87].
13. Having considered his Article 8 rights she found that the decision was not disproportionate [95].

### **Home Office Case Notes**

14. During the course of her submissions before the Upper Tribunal, Ms Jones produced two printouts of the relevant Home Office Case Notes relating to the appellant, created on 2 October 2008 by the "Legacy CRT Unit."
15. In the first document created on 2 October 2008, it was noted that the legacy questionnaire was received on 9 June 2008. An MP letter was received in September 2008 requesting expedition to "his constituent's claim." The appellant is referred to as a national of the Federal Republic of Yugoslavia.
16. In the second printout, also dated 2 October 2008, it is noted that the appellant is a 35 year old failed asylum seeker who has been resident in the UK for nine years and ten months. During this time, he has been working as a construction foreman and has been supporting himself with no recourse to public funds. He has no known criminal involvement and would have no doubt established a private life in the last nine years with work colleagues and acquaintances made in the UK. This, together with information above, namely that his appeal was allowed on 10 February 2005, and the undue delay through no fault of his own to have his appeal heard, led to the decision to grant him leave to remain outside the Rules.

### **Submissions**

17. Mr Farhat, who did not represent the appellant before the First-tier Tribunal, submitted that on the facts of the appellant's case, the Judge erred in her approach to the statutory construction of the words "by deception".
18. On 10 February 2005 the appellant's appeal was allowed on human rights grounds. On 8 October 2008 he was granted indefinite leave to remain. Whilst it is correct that he held himself out to be a Kosovan national at the time, that did not mean that such leave was obtained "by deception".
19. The appellant's solicitors had sent a letter to the respondent dated 15 November 2018 in anticipation of the appeal hearing on 13 December 2018. They noted that one of the key issues to be determined was whether the appellant acquired ILR as a direct result of making a false representation or whether it was granted to him based on other considerations. A request was thus made for the respondent to furnish

details of the grounds on which the appellant was granted ILR on 8 October 2008.

20. Following that request, the senior case worker informed his solicitors that the Tribunal had directed the respondent to provide the details.
21. The letter from UKVI, dated 22 November 2011, in response to those directions stated that the appellant was granted indefinite leave to remain exceptionally outside of the Immigration Rules - p31.
22. The letter from the Home Office to the appellant dated 8 October 2008 was produced at pages 33-34 of the respondent's bundle. In that letter it was stated that his case had been reviewed and having fully considered the information he provided, and because of the individual circumstances in his case, it has been decided to grant him indefinite leave to remain in the UK. This leave has been granted exceptionally outside the Immigration Rules. This is due to "your strength of connections and length of residence in the UK."
23. Mr Farhat submitted that his connection and length of stay was the operative basis upon which the appellant was granted ILR. His nationality did not have any bearing on the decision to grant him indefinite leave to remain.
24. Mr Farhat contended that the appellant's ILR should not have been revoked under s.76(2) of the Nationality, Immigration and Asylum act 2002, as it had not been obtained by deception, but by virtue of his family and private life.
25. He relied on the decision of R (on the application of Abbas) v SSHD [2017] EWHC 78 (Admin) at [34], where the High Court held that there needs to be implicit reliance upon the deception which led to the grant of ILR for it to be justified that it could be revoked pursuant to s.76(2).
26. He submitted that no aspect of the appellant's successful appeal on the basis of human rights grounds on 10 February 2005 could said to have been tainted by deception.
27. He referred to the respondent's guidance on revocation of indefinite leave to remain entitled "Home Office: Revocation of Indefinite Leave, Version 4.0, 19 October 2015" at page 11.
28. Paragraph 4.1 of the guidance - headed "Passage of Time" - notes that the length of time spent in the UK may constitute a reason for not revoking indefinite leave.
29. The guidance states that it could only be relevant to cases under s.76(2) and 76(3). Cases under s.76(1), length of time spent in the UK, will not constitute a bar to revocation of indefinite leave because it, and any other Article 8 considerations, will have been taken into account in deciding whether the person should be deported. Section 76(1) provides that the respondent may revoke a person's indefinite leave to remain if that person is liable to deportation but cannot be deported for legal reasons.

30. It states that what is of more relevance is the length of time that has passed since the incident(s) which is/are causing the review of the person's continuing entitlement to indefinite leave. For example, indefinite leave would not normally be revoked where the deception in question or where the person's travel to their home country occurred more than five years ago. Each case must be considered on its merits. The longer the person has been in the UK, or more crucially, the more time it has been since the incident, the less likely it will be appropriate to revoke ILR.
31. Mr Farhat submitted that the Judge did not have proper regard to the fact that the appellant had spent many years in the UK since the making of the initial false representation that he was a national of Kosovo. That in itself did not lead to a grant of ILR.
32. He referred to the reported decision of Upper Tribunal Judge Kopieczek in Sleiman (Deprivation of Citizenship; Conduct) [2017] UKUT 00367 (IAC). That appeal considered the decision to deprive the appellant, Mr Sleiman, of his British citizenship under s.40 of the British Nationality Act 1981.
33. Upper Tribunal Judge Kopieczek held after a consideration of relevant IDIs and case law that in an appeal against a decision to deprive a person of a citizenship status, in assessing whether the appellant obtained registration or naturalisation "by means of" fraud, false representation or concealment of a material fact, the impugned behaviour must be directly material to the decision to grant citizenship. The fraud must be operative or contributing to the grant of citizenship.
34. Mr Farhat noted that the wording in s.76(2)(a) of the 2002 Act refers to leave being revoked if it was "obtained by deception." He submitted that the word "deception" is used instead of "fraud" which is used in the 1981 Act. He submitted that the decision in Sleiman "has some transferable principles".
35. In Sleiman, the Tribunal held that the deception regarding the date of birth of that appellant, which enabled him to obtain DLR and subsequently ILR, and which underpinned the grant of citizenship, had to have had a material and direct bearing.
36. Mr Farhat submitted that his untruthful particulars in the asylum claim had no bearing on the criteria for a grant of leave under the Legacy programme. The "but for" approach was rejected in Sleiman. Direct causation is required. Indirect causation is not relevant. The Tribunal referred to submissions on behalf of the appellant at [27-29] in respect of the "but for" approach as well as the "foreseeable consequences" approach.
37. Mr Farhat referred to [57] where the Tribunal held that there must be some causative link between the action or omission of the appellant and the obtaining of citizenship. At [50] in Sleiman, the Tribunal referred to an earlier decision of the Upper Tribunal in the decision of Deliallis (British Citizen: Appeal: Scope) [2013] UKUT 439. There the appellant had obtained refugee status on the basis that he was Kosovan, whereas he

was in fact from Albania. He then obtained indefinite leave to remain and following that British citizenship. In his citizenship application he maintained that he was from Kosovo. The Tribunal decided that the secretary of state's discretion should not have been decided differently and that it was appropriate to deprive that appellant of his citizenship.

38. Mr Farhat referred to [53] where Upper Tribunal Judge Kopieczek stated that in cases of obvious fraud, such as in relation to identity or nationality, it is much easier to see the causative link between the conduct of the appellant and the granting of citizenship. In other cases, the link may be less clear.
39. Upper Tribunal Judge Kopieczek held at [60] that the phrase “direct bearing” suggests that in cases where the fraud etc. has an indirect bearing on the grant of citizenship, deprivation action would not be appropriate. That he found to be consistent with the phrase “by means of” in s.40(3). He therefore agreed that the impugned behaviour must be directly material to the decision to grant citizenship.
40. Upper Tribunal Judge Kopieczek also noted that the appellant, Mr Sleiman, was granted ILR on 4 May 2010 under the Legacy scheme. He accepted that there was some validity to the argument on behalf of the appellant to the effect that grants of leave under the Legacy were made in cases where individuals had no right (otherwise) to be in the UK and no doubt included many whose asylum claims were false [63].
41. Judge Kopieczek found at [68] that the First-tier Tribunal was entitled to find as he did in relation to the credibility of the appellant's evidence about his intention to inform the respondent as to his correct date of birth and in relation to his having deliberately sought to portray himself as a minor when he claimed asylum, and that he had perpetrated that deception in the process of applying for citizenship.
42. However, having concluded that the behaviour (fraud, etc.) must be directly material to the decision to grant citizenship, Judge Kopieczek did not consider that the evidence in this case justified the First-tier Tribunal's conclusion that the appellant's deception as to his date of birth was directly material to the decision to grant citizenship, namely that it was obtained “by means of” fraud, false representations or concealment of a material fact. That resulted in the decision being set aside.
43. Mr Farhat submitted that the wording under the 2002 Act, namely “by deception” and the wording in the British Nationality Act, namely, “by means of fraud, etc.” are in effect synonymous. There is no material difference between those phrases. The principle in Sleiman applies to the revocation context.
44. On behalf of the respondent, Ms Jones referred to [27] in Sleiman. She sought to rely on the “but for” approach referred to. She noted that the appellant in Sleiman was already a British national.
45. She referred to [28] in Sleiman where it was argued that the respondent's delay broke the chain of causation. In this case the appellant's application for naturalisation was refused on that point.

46. She referred to the legacy grant at page 33. The respondent did not accept that there had been a delay. Moreover, at no stage did the appellant say that he was a national of Albania. He still applied for naturalisation on the basis that he was a Kosovan. If he had said that he was an Albanian, he would be expected to be refused as he was.
47. She referred to [44] and [50] in Sleiman, where the appellant in Deliallis had obtained refugee status on the basis that he was a Kosovan, whereas he was from Albania. Similarly, this appellant obtained indefinite leave to remain on the basis that he was from Kosovo, whereas he was not. She too referred to [53] where the Tribunal noted that in cases of obvious fraud, such as in relation to identity or nationality, it is much easier to see the causative link between the conduct of the appellant and the granting of citizenship. In other cases, it may be less clear.
48. She submitted with regard to the dismissal of his appeal on human rights grounds, that from the findings in [67-69] the Judge was entitled to come to the decision arrived at.
49. In reply, Mr Farhat again referred to the 'applicability' of Sleiman to the facts relevant to the appellant's revocation of his ILR under the 2002 Act. He submitted that the "but for" argument is against the authority. The appellant in Sleiman obtained ELR for a period followed by a grant of discretionary leave to remain prior to the grant of indefinite leave to remain. In Deliallis, the appellant had obtained refugee status on the basis of deception as to his nationality.
50. He emphasised that the appellant in Sleiman sought to portray himself as a minor when he claimed asylum and that he had perpetrated that deception in the process of applying for citizenship. The appellant's deception was not directly material to the decision to grant citizenship.
51. He submitted that it was up to Parliament to decide whether or not the relevant statutes should be amended and clarified.

### **Assessment**

52. Section 76(2) of the Nationality, Immigration and Asylum Act 2002 provides that the secretary of state may revoke a person's indefinite leave to remain in the UK if the person's leave was obtained by deception.
53. The respondent sought to revoke the appellant's indefinite leave to remain in the UK, granted on 8 October 2008. The appellant entered the UK on 29 December 1998 illegally. In claiming asylum he used his correct name and date of birth; however he stated that he was a national of Kosovo.
54. His appeal against the respondent's refusal of his asylum claim was dismissed on 26 January 2004. On 10 February 2005, his appeal was allowed on human rights grounds only. Following that, he was granted indefinite leave to remain in the UK on 8 October 2008. Throughout his dealings with the Home Office he continued to state that he was a Kosovan national.

55. When he applied for naturalisation on 30 June 2015, he stated that he was a Kosovan national. However, the Albanian authorities confirmed that he is Albanian. As a result, his application for naturalisation was refused on the basis of deception, on 19 April 2016. He subsequently made an application for leave to remain under paragraph 276ADE of the Rules on the grounds of private life on 2 November 2017.
56. The First-tier Tribunal Judge rejected the contention on the appellant's behalf that the appeal should be allowed on the basis that his ILR should not have been revoked pursuant to s.76(2), as it was not obtained by deception. Whilst acknowledging that the application for asylum was refused and that he was granted leave outside the Immigration Rules, she stated that this was still on the basis that he was a Kosovan national.
57. I have referred to the decision of the Upper Tribunal in Sleiman in some detail. That was an appeal against the decision to deprive a person of citizenship status. As noted, the Upper Tribunal held that in assessing whether the appellant obtained registration or naturalisation "by means of" fraud, false representations or concealment of a material fact, the impugned behaviour must be directly material to the decision to grant citizenship.
58. The Upper Tribunal interpreted the phrase "by means of" fraud under s.40(3) of the 1981 British Nationality Act. The secretary of state had to be satisfied that the registration or naturalisation was obtained "by means of fraud."
59. In the appellant's case the Tribunal considered s.76(2) of the 2002 Act, under which the secretary of state may revoke a person's indefinite leave to remain in the UK if the leave was obtained "by deception." That phrase connotes a dishonest and deceitful state of mind.
60. I do not find that there is any material difference between the phrase used in s.76 of the 2002 Act from that used in the British Nationality Act 1981.
61. The appellant was granted indefinite leave to remain outside the Rules under the "legacy scheme." The basis was that he would no doubt have established a private life in the last nine years with work colleagues and acquaintances in the UK. Following the undue delay through no fault of his own to have his appeal heard, it was decided to grant the appellant leave to remain outside the Rules.
62. He was accordingly granted leave to remain outside the Rules on the basis of human rights grounds owing to the length of his residence and ties to the UK.
63. As in the case of Sleiman, the appellant was granted leave to remain outside the Rules under the legacy provisions owing to his length of residence and ties to the UK. There must accordingly be behaviour which is directly material to the decision to revoke indefinite leave.
64. The Home Office guidance on revocation of indefinite leave to remain notes that indefinite leave would not normally be revoked where the



deception in question occurred more than five years ago. The longer a person has been in the UK, or crucially, the more time it has been since the incident, the less likely it will be appropriate to revoke ILR.

65. In the appeal in Deliallisi, the appellant had obtained refugee status on the basis that he was Kosovan, whereas he was in fact from Albania. He obtained indefinite leave to remain followed by British citizenship. He continued to maintain that he was from Kosovo as part of his citizenship application. His impugned behaviour was directly material to the decision to deprive him of his citizenship. The respondent's decision was accordingly upheld.
66. In the appellant's case, his asylum claim was refused. He was granted indefinite leave to remain on 8 October 2008 under the legacy provisions. His application for naturalisation was refused on the grounds of deception. His current application, which was the subject of the appeal, was for leave to remain under the Rules on the grounds of private life.
67. In the circumstances I find that the First-tier Tribunal erred in finding that the appellant was granted leave outside of the Immigration Rules on the basis that he was a Kosovan national.
68. I have had regard to Ms Jones' contention that the "but for approach" referred to in Sleiman is appropriate. However, that was a submission made on behalf of the respondent. The Tribunal in Sleiman went on to hold that his conduct had to be directly material to the decision to grant him citizenship.
69. Having concluded that the appellant's behaviour must be directly material to the decision granting indefinite leave to remain, I find that the evidence before the First-tier Tribunal did not justify the conclusion that his deception was directly material to the grant of indefinite leave to remain pursuant to s.76(2)(a), namely that the leave was obtained "by deception."
70. In the circumstances, I find that there has been an error on the point of law, such as to require the decision to be set aside.
71. In the light of my conclusion I re-make the decision and allow the appeal on the basis that the appellant's indefinite leave to remain was not shown to have been obtained by deception.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law. Having set aside the decision, I re-make it allowing the appeal.

No anonymity direction is made.

Signed

Date 31 August 2019

Deputy Upper Tribunal Judge Mailer